

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0468

**Withholding Tax
Calendar Years 1994, 1995, and 1996**

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ISSUE(S)

I. Withholding Tax – Liability of Employer

Authority: IC 6-3-4-8; 45 IAC 3.1-1-97; IF#86

Taxpayer protests the tax assessed.

II. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is engaged in several seasonal business activities. During the summer the taxpayer sells fireworks from numerous Indiana locations. In the fall, the taxpayer operates a haunted house and sells Halloween costumes and supplies. The fireworks stores have several different names, the haunted house operated under another name and the costume sales, yet another. The taxpayer is registered for withholding tax.

The audit examination of the taxpayer's books and records, including payroll reports revealed taxable wages for which no withholding tax had been remitted. The taxpayer had large amounts of contract labor during the audit period. Additional information was requested from the taxpayer in order for audit to make a proper determination of whether these payments should be considered wages subject to state and county withholding or whether they might rightfully be considered casual labor not subject to withholding requirements. Audit was not supplied with additional information nor was the hearing officer.

The audit therefore proposes to adjust withholding tax for payments made to a nonresident contractor and other subcontractors.

ISSUE

I. **Withholding Tax** – Liability of Employer

DISCUSSION

Taxpayer failed to withhold tax from a nonresident contractor and employees' wages. At hearing, the taxpayer conceded the issue.

FINDING

Taxpayer conceded the issue.

ISSUE

II. **Tax Administration** – Penalty

Taxpayer protests the imposition of penalty.

DISCUSSION

Taxpayer protested the imposition of the negligence penalty and has conceded the issue at hearing.

FINDING

Taxpayer conceded the issue.

CONCLUSION

Taxpayer, at hearing conceded both issues.